

DPS-37

November 3, 2005

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **05-3614**

TYSON ALAN DITCH

v.

JAMES L. GRACE

(W.D. Pa. Civ. No. 04-cv-00164)

Present: ROTH, FUENTES AND VAN ANTWERPEN, CIRCUIT JUDGES

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1), and appointment of counsel; and
- (2) Appellee's response in opposition to the application for a certificate of appealability

in the above-captioned case.

Respectfully,

Clerk

MMW/DPW/awi

ORDER

The foregoing request for a certificate of appealability is granted in part and denied in part. See 28 U.S.C. 2253(c)(2). Appellant's request for a certificate of appealability regarding his claim that he was denied counsel at the preliminary hearing is granted. See Hameen v. State of Delaware, 212 F.3d 226, 248 (3d Cir. 2000); Coleman v. Alabama, 399 U.S. 1, 7 (1970). Additionally, as jurists of reason could debate whether counsel was

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ineffective for failing to file a pretrial suppression motion regarding the pretrial identification at the preliminary hearing, Appellant's request for a certificate of appealability is also granted as to this claim. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Strickland v. Washington, 466 U.S. 668 (1984). Because jurists of reason could not debate the resolution Appellant's other claims, Appellant's request for a certificate of appealability is denied in all other respects.



*Marcia M. Waldron*

Marcia M. Waldron, Clerk

Dated: 20 December 2005

AWI/CC: TAD

DWF

TS

By the Court,

/s/ Julio M. Fuentes

Circuit Judge